Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of		
	)	
National Exchange Carrier Association	)	**WC Docket No. 02-340**
Tariff FCC No. 5, Transmittal No. 951	)	
	)	

WORLDCOM OPPOSITION

WorldCom, Inc. (WorldCom) hereby submits its opposition to the Direct Case filed in the above-captioned proceeding on November 21, 2002 by the National Exchange Carrier Association (NECA).

I. The Proposed Tariff Language Violates Sections 201 and 202 of the Act

All suppliers of telecommunications services seek to reduce credit risk to the greatest extent possible. However, the degree to which a competitive carrier can reduce its credit risk is limited by market forces. As the carrier takes increasingly stricter measures to control its risk of nonpayment, by demanding larger security deposits or demanding such deposits from a larger population of customers, at some point the carrier's customers respond to those growing burdens by switching to competing carriers that are willing to accept higher levels of risk in order to win business. In that manner, the market balances competitive carriers' credit risk against the burdens placed on customers.

By definition, however, market forces cannot constrain the ability of dominant carriers such as NECA members to impose excessive burdens on customers as they seek to reduce credit risk. Because dominant carriers have no concerns that an overly stringent security deposit policy could drive away customers, a dominant carrier is unlikely, in the absence of regulatory constraints, to balance the carrier's interest in reducing credit risk against the burdens placed on the carrier's customers.

On numerous occasions, the Commission has found that dominant LEC tariff terms and conditions are just and reasonable only if they reflect a similar balancing of carrier and customer interests to that found in a competitive market. For example, in considering security deposit provisions, the Commission has "recogniz[ed] that it is prudent for the telephone company to seek to avoid non-recoverable costs imposed by bad credit risks."[1] At the same time, however, the Commission has rejected "vague charges [that] could become unreasonably burdensome," provisions that "allow[ed] the telco unnecessarily broad discretion" and provisions that had "potential anticompetitive effects."[2]

Similarly, when considering 1987 BellSouth tariff revisions that were intended to mitigate the impact of potential customer bankruptcy, the Commission "recognize[d] that the proposed tariff revisions could reduce BellSouth's liability under the circumstances that it has described."[3] At the same time, however, the Commission "believe[d] . . . that the revisions may place undue burdens on customers . . . . Provisions that more directly applied only to those customers that might default and that are supported with adequate documentation would be more reasonable."[4]

As the Commission recognizes in the Designation Order, NECA Transmittal No. 951 would "significantly alter the balance between the carriers participating in the NECA

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[1] Investigation of Access and Divestiture-Related Tariffs, Memorandum Opinion and Order, CC Docket No. 83-1145 Phase I, 97 FCC 2d 1082 (1984) (Phase I Order), Appendix D, discussion of Section 2.4.1(A).
[2] Id.
[3] Annual 1987 Access Tariff Filings, Memorandum Opinion and Order, 2 FCC Rcd 280, 304-305 (1986).
[4] Id.

tariff and their interstate access customers with respect to the risks of nonpayment of interstate access bills that was struck in the early 1980s when access charges were instituted."[5] The Commission should reject Transmittal No. 951 because the tariff language proposed by NECA does not balance NECA members' interests against those of its customers. The proposed tariff would provide NECA members with a far better level of protection against bad debt than could be obtained in a competitive market and would impose excessive burdens on NECA members' customers.

A. NECA Members Already Enjoy Good Protection Against Credit Risk

NECA seeks to justify the proposed tariff language by pointing to an increase in NECA members' uncollectibles in 2001 and 2002. But an increase in uncollectibles is, by itself, largely irrelevant to the question of whether NECA's existing tariff language already strikes a reasonable balance between NECA members and their customers.[6]

As an initial matter, because uncollectibles always vary with the business cycle, an increase in NECA members' uncollectibles from one year to the next is not necessarily an indicator of a permanent increase in NECA members' level of risk. Even if it is true that "[u]ncollectibles for 2002 far exceed any prior year,"[7] the factors that NECA cites as driving the spike in uncollectibles in 2002 – the Global Crossing and WorldCom bankruptcies -- are one-time events.

Moreover, even if there has been a modest permanent increase in NECA members' risk, that would still not support NECA's claim that its existing tariff does not reasonably

[5] Designation Order at ¶ 9.
[6] Direct Case at 3-4.
[7] Direct Case at 6.

balance the interests of NECA members and their customers. In light of recent changes in approach to telecommunications regulation, including the Telecommunications Act of 1996's shift from protected monopolies to greater local competition, NECA's risk profile of 1984 is not the standard against which the reasonableness of Transmittal No. 951 should be judged.

Notably, there is no evidence that NECA's current tariff language has left NECA members facing greater credit risk than other firms in the telecommunications industry, including nondominant carriers.

- The increase in uncollectibles in 2001 and 2002 is not a phenomenon that has uniquely affected NECA LECs. While the NECA LECs' uncollectibles may have increased in 2001 and 2002, every other firm in the telecommunications industry also saw its uncollectibles increase during the same period. Time Warner Telecom, for example, recently reported to the SEC that its uncollectibles expense has increased due to customer bankruptcies.[8]
- The NECA LECs were not uniquely vulnerable to the bankruptcies of Global Crossing and other customers in 2000 and 2001. Competitive firms were in fact as vulnerable as the NECA LECs to the impact of customer bankruptcies. For example, Level 3, WorldCom, Z-Tel, AT&T, Sprint, and Primus Telecommunications were among the largest unsecured creditors of Global Crossing.[9] Similarly, Covad, WorldCom, AT&T, Williams, Touch America, and Nextel were among the largest unsecured creditors of XO Communications.[10]

[8] Time Warner Telecom, SEC Form 10-K, March 28, 2002, at 34.
[9] http://news.findlaw.com/hdocs/docs/globalcrossing/glblx012802ch11pet.pdf
[10] http://www.bankrupt.com/xo.txt

Given that there is no evidence that the NECA LECs face a uniquely high level of risk, the Commission must find that NECA's existing security deposit tariff language already strikes a reasonable balance between the NECA LECs' interests and those of their customers. Any step to further reduce the NECA LECs' credit risk would not reflect a reasonable balancing of carrier and customer interests, and thus would be unlawful under section 201.

B. NECA's Proposed Criteria for Triggering Security Deposit Requests are Unreasonable

Not only has NECA failed to demonstrate any basis for a reduction in its credit risk, but the particular scheme proposed in Transmittal No. 951 is patently unjust and unreasonable. In particular, the proposed tariff language allowing NECA LECs to demand a security deposit from any non-investment grade customer is overbroad, and would provide the NECA LECs with a far better level of protection than any competitive carrier could obtain.

NECA attempts to justify its "non-investment grade" trigger on the grounds that "[o]ver 90% of all rated companies that have defaulted since 1983 would have received ratings of commercially unacceptable based on the proposed tariff standards."[11] But that statement only addresses the level of risk borne by NECA members; it does not show that NECA's proposed policy balances NECA members' interests against those of their customers. Indeed, while a policy that captures 90 percent of potential defaulters is obviously in NECA's interest, the evidence shows that NECA would achieve that level of

[11] Direct Case at 20.

protection against credit risk only by imposing tremendous burdens on NECA's customers. In order to capture 90 percent of potential defaulters, NECA's "non-investment grade" trigger would demand deposits from a large number of customers, most of which present little or no risk. For example, according to Standard and Poor's, a firm with a "B" rating "currently has the capacity to meet its financial commitment on the obligation."[12] And the default rate for non-investment grade firms as a whole is generally less than five percent.[13] In other words, NECA would demand security deposits from roughly twenty customers to guard against the possibility that one of those customers might default. Such a security deposit policy plainly does not identify only those customers that "are the major cause of the increased risk,"[14] and is thus overbroad and unreasonable.

Market forces require competitive firms to employ a far more targeted approach to controlling credit risk than NECA is proposing. WorldCom does not use a bond rating-based test, much less a bond rating-based test with an "investment grade" trigger, in determining whether a customer's financial condition might warrant a request for some type of security. And it is highly unlikely that any competitive carrier employs a security deposit policy that either directly or indirectly targets all non-investment grade customers. If a competitive carrier were to demand security deposits from such customers, it would quickly lose those customers to other carriers willing to absorb such a minimal level of risk without demanding a security deposit. Instead, competitive firms must assess which customers are truly the "major cause" of their credit risk.

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[12] Standard & Poor's Corporate Ratings Criteria at 8 (http://www2.standardandpoors.com/spf/pdf/fixedincome/corpcrit2002.pdf).
[13] Moody's Investors Service, "Default and Recovery Rates of Corporate Bond Issuers," February, 2002 (http://riskcalc.moodysrms.com/us/research/defrate/02defstudy.pdf).

It should not be surprising that a below-investment grade bond rating is not a commercially viable trigger for security deposit requests. The investment grade standard was not developed to determine the point at which a security deposit would be appropriate in a commercial transaction; rather, the term "investment grade" was originally used by regulatory bodies to connote obligations eligible for investment by institutions such as banks, insurance companies, and savings and loan associations.[15] There is no basis for the Commission to find that risk level of a pension fund or bank, which operate under government regulations designed to ensure stability, is the appropriate benchmark for NECA's security deposit tariff.

Similarly overbroad is NECA's proposal to redefine a "proven history of late payment" as "two or more occurrences in the preceding twelve (12) month period during which the Telephone Company received the customer's remittance after the payment date specified" in the tariff.[16] To the best of WorldCom's knowledge, NECA LECs have not generally interpreted two late payments in a year, no matter how inconsequential, as rising to the level of a "proven history of late payment." Certainly, NECA has provided no evidence that a pattern of two late payments in a year identifies only those customers that present a substantial risk that they will not pay their bills in the future. A payment history of two late payments in a year is so common as to be useless as a predictor of risk. Any competitive carrier that sought to impose such a policy would quickly lose its customers to carriers that employed a more targeted approach to controlling their credit risk.

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[14] Direct Case at ¶ 14.

[15] Standard & Poor's Corporate Ratings Criteria at 9 (http://www2.standardandpoors.com/spf/pdf/fixedincome/corpcrit2002.pdf).

II. NECA Has Failed to Satisfy the Substantial Cause Test

A. Transmittal No. 951 is Subject to the Substantial Cause Test

NECA is simply wrong when it contends that the substantial cause test is inapplicable because "Transmittal No. 951 does not alter the operative conditions of any term plans (i.e., discounts or commitment lengths)."[17] The substantial cause test is applicable to Transmittal No. 951 because term plan customers are subject to the existing security deposit provisions of NECA's tariff, and would become subject to the new tariff language if Transmittal No. 951 were to take effect. Contrary to NECA's claim, it is irrelevant that the security deposit language is in the General Regulations in Section 2 of its tariff, and is not explicitly repeated in the term plan section of NECA's tariff.

NECA is also wrong when it contends that the substantial cause test is inapplicable because the NECA tariff's term plans "do not state that the tariff's General Regulations will not change during the length of the plan."[18] The Commission has never said that the substantial cause for change test applies only when a dominant carrier's tariff contains an explicit promise not to alter a material term or condition. In fact, the Commission has said that the substantial cause test applies even if the tariff contains a "sweeping reservation to unilaterally change any and all terms and conditions of service."[19]

Permitting NECA to make changes to the security deposit provisions applicable to term plans would be at odds with the policy basis for the substantial cause test. In the RCA Americom Decisions, the Commission stated that it "strikes us as anomalous that a carrier could use the tariff filing process to prevent any of its service terms from being enforced

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[16] NECA Transmittal No. 951, proposed 5th revised page 2-26.
[17] Direct Case at 23.
[18] Direct Case at 23.

against it by customers, while at the same time bind customers to all the tariff provisions for as long as the carrier wishes . . . ."[20] Given that existing term plan customers are bound to NECA LECs by substantial termination liabilities, it would be unfair and anomalous if NECA could unilaterally change the security deposit regulations or other material provisions of those term plans. Term plan customers have made multi-year commitments to NECA LECs with the expectation that they would have to pay security deposits only if they had a "proven history of late payment."

B. NECA Has Not Met the Requirements of the Substantial Cause Test

NECA does little more than assert that there is substantial cause for making the proposed tariff changes, contending that "late payment histories and unacceptable commercial credit ratings . . . are indicative of a higher level of payment risk."[21] But such generalized assertions of potential harm do not provide the requisite showing.[22] It is well established that mere reductions from anticipated revenues do not constitute substantial cause.[23] Rather, the carrier must demonstrate unanticipated changes in business circumstances of such degree that they would "constitute an injury to [the carrier] that outweigh[s] the existing customers' legitimate expectation of stability."[24] The Commission

[19] RCA American Communications, Inc., Memorandum Opinion and Order, 86 FCC 2d 1197, 1202 (1981)
[20] RCA American Communications, Inc., Memorandum Opinion and Order, 84 FCC 2d 353, 358-359 ¶ 17.
[21] Direct Case at 23.
[22] AT&T Communications Contract Tariff No. 360, Order, 11 FCC Rcd 3194, ¶ 21 (1995) (AT&T Contract No. 360 Order).
[23] AT&T Communications Revisions to Tariff FCC No. 2, Order, 5 FCC Rcd 6777, 6779 ¶ 21 (1990) (AT&T Tariff No. 2 Order).
[24] Id.

has, for example, suspended tariffs when the customer failed to demonstrate that "its projected losses [were] sufficiently large or certain to demonstrate 'substantial cause.'"[25]

NECA cannot demonstrate injury sufficient to outweigh existing customers' legitimate expectation of stability. In particular, NECA is unable to show that "it will fail to recover its costs or that net revenues [from term plan services] will become negative."[26] Even if there has been a spike in NECA's term plan uncollectibles in 2002, that increase (1) would only be temporary; and (2) would not depress NECA's earnings below just and reasonable levels. As NECA points out, term plan revenues represent only 1.5 percent of NECA's total common line and traffic sensitive billed revenue.[27]

III. The Proposed 10-day Notice Period is Unreasonable

As the Commission has explained, the 30-day notice period in NECA's current tariff is essential because it allows sufficient time for the LEC and customer to investigate or cure alleged tariff violations before the LEC takes the drastic step of refusing or discontinuing service. In the Phase I Order, for example, the Commission noted with approval commenters' statements that the 30-day notice period "provides reasonable time for [customers] to convey their concerns to the telco."[28] And, in reviewing BellSouth's 1987 proposal for a 15-day notice period, the Commission expressed concern that the BellSouth proposal "may impair the cooperative spirit we have attempted to promote between carriers and customers."[29]

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[25] AT&T Contract No. 360 Order at ¶ 20.
[26] AT&T Tariff No. 2 Order, 5 FCC Rcd at 6779, ¶ 21.
[27] Direct Case at 24.
[28] Phase I Order, Appendix D, discussion of section 2.1.8.
[29] 1987 Access Tariff Order, 2 FCC Rcd at 304.

The Commission should reject NECA's proposal because the proposed 10-day notice period is even shorter than the 15-day notice period that the Commission accepted only reluctantly in 1987, and suffers all of the same flaws that the Commission identified in 1987. Among other things, the NECA proposal would apply to any customer, not just those that present a significant risk of nonpayment. As the Commission explained in 1987, "[p]rovisions that more directly applied only to those customers that might default . . . might be more reasonable."[30]

Reducing the notice period from 30 days to 10 days would drastically alter the balance of power in any dispute between the NECA LECs and their customers. The threat of imminent refusal or discontinuance of service would give NECA LECs an unreasonable degree of leverage in any negotiations between the LEC and the customer concerning the alleged tariff violations. Given that there are in most instances no alternatives to NECA LECs' interstate access services, and that customers would be unable to switch in time even if alternate facilities were available, customers receiving a 10-day notice simply could not afford to risk the possibility that the NECA LEC would stop processing orders or terminate service altogether.

Finally, the Commission should reject NECA's proposal for a 10-day notice period for the simple reason that the NECA LECs cannot meet the three-day requirement that the Commission adopted in 1987. Paper billing, under which there is a substantial delay between the bill date and the receipt of the bill by the customer, is much more common with NECA LECs than with the RBOCs and other large LECs.

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[30] Id.

IV. Conclusion

For the reasons stated herein, the Commission should reject NECA Transmittal No. 951.

Respectfully submitted,
WORLDCOM, INC.

/s/ Alan Buzacott

Alan Buzacott
1133 19th Street, N.W.
Washington, DC 20036
(202) 887-3204

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